95-1661

Supreme Court, U.S.
FILED
FEB 21 1996
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

DOMINIC ROBERT, et al., Petitioners

v.

PHILADELPHIA PARK, et al., Respondents

On Petition for Writ of Certiorari to

The Supreme Court of Pennsylvania

Petition for Writ of Certiorari

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QUESTIONS PRESENTED FOR REVIEW

Whether the gag order issued by the trial court during civil discovery proceedings, which order was not based upon any showing of good cause, was not limited to the context of pretrial discovery and did not allow for the dissemination of the same information if gained from other sources, violates the First Amendment of the United States Constitution.

LIST OF THE PARTIES

DOMINIC ROBERT, A MINOR BY HIS MOTHER AND NATURAL GUARDIAN, MARY ANNE ROBERT

MARY ANNE ROBERT

PHILADELPHIA PARK

BENSALEM RACING ASSOCIATION, INC.

KEYSTONE TURF CLUB, INC.

GREENWOOD RACING, INC.

THOROUGHBRED RACING PROTECTIVE BUREAU, INC.

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TABLE OF CITED AUTHORITIES

CASES:

Seattle Times v. Rhinehart, 467 U.S. 20, 104, S.Ct. 2199, 81 L.Ed.2d 17(1984) 12-16

CONSTITUTIONAL PROVISIONS:

U.S. Constitution Amendment 1 13, 14, 17

OPINIONS AND ORDERS BELOW

No opinions were delivered in the courts below. By order dated December 6, 1994, The Supreme Court of Pennsylvania granted Petitioners' Petition for Allowance of Appeal, said order is reported at _____Pa._____, 652 A.2d 839 (1995). By order dated November 22, 1995, the Supreme Court of Pennsylvania dismissed Petitioners' appeal as having been improvidently granted, said order is reported at _____Pa._____, 667 A.2d 211 (1995). Copies of said orders are attached hereto in the appendix. The orders of the Superior Court of Pennsylvania and the Court of Common Pleas of Bucks County, Pennsylvania have not been reported. Copies of said orders are attached hereto in the appendix.

STATEMENT OF JURISDICTION

On November 22, 1995 the Supreme Court of Pennsylvania entered an order dismissing Petitioners' appeal as having been improvidently granted.

This court has jurisdiction to review the order below by writ of certiorari pursuant to 28 U.S.C. Section 1257(a).

CONSTITUTIONAL PROVISIONS

U.S. Const. amend 1:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend XIV, §1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State

deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The challenged gag order arose out of a civil action commenced on September 8, 1991 alleging, inter alia, that minor Plaintiff and his mother were subjected to an unlawful seizure, holding, imprisonment and detention of their persons without probable cause at the Philadelphia Park Race Track on June 6, 1991.

In the course of pretrial discovery, Plaintiffs sought to compel an answer to their interrogatory seeking disclosure of the name of the alleged confidential informant who provided the information upon which the challenged search and seizure were based. On August 10, 1993, Defendant, Philadelphia Park, was ordered by the Court of Common Pleas of Bucks County, Pennsylvania, per the Honorable Ward F. Clark, to disclose the name of the

alleged confidential informant. Subsequently, Defendants filed a Motion For Protective Order in the trial court. A court proceeding was held in connection therewith on November 19, 1993. After directing defense counsel to disclose, at sidebar, the identity of the alleged confidential informant, the trial court without hearing any evidence, issued a gag order from the bench prohibiting Plaintiffs' counsel from disclosing the identity of the alleged confidential informant to anyone until further Order of Court.

To date, the gag order has neither been modified nor vacated but rather remains in full force and effect as issued.

The gag order entered by the trial court is set forth below:

"Within 90 days of today the deposition of the following named persons will be completed by the Plaintiff. . .

All right, in addition to that Order within 120 days of today that would be 30 days after the 90, the deposition of the C.I. will take place in my chambers in camera.

Meanwhile the identity of the C.I. will not be disclosed by the attorneys in this case -- Plaintiff

> or Defendant, all of you being officers of the Court and this gag order on disclosing such identity will remain in full force and effect until further Order of the Court."

The federal question sought to be reviewed was raised in the trial court by Motion For Reconsideration of the Gag Order filed on November 29, 1993. That Motion was never ruled upon. A Notice of Appeal from the November 19, 1993 gag order was timely filed with the Superior Court of Pennsylvania on December 20, 1993. Subsequent to Defendants' Petition to quash the appeal as interlocutory and Plaintiffs' reply thereto addressing the

federal question, The Pennsylvania Superior Court quashed the appeal on April 12, 1994 without reaching the merits and without written opinion. Plaintiffs filed a Petition For Allowance of Appeal to the Pennsylvania Supreme Court on May 11, 1994, again raising the federal question. After the submission of briefs and oral argument, the Pennsylvania Supreme Court by Order dated November 22, 1995 dismissed the appeal as having been improvidently granted.

ARGUMENT

The Supreme Court of Pennsylvania through its denial of discretionary review of the challenged gag order has allowed an impermissible prior restraint on speech to stand.

It cannot be gainsaid that the challenged gag order constitutes a substantive encroachment on freedom of speech in the nature of prior restraint. As made clear by your Honorable Court in Seattle Times v. Rhinehart, 467 U.S. 20, 104, S.Ct. 2199, 81 L.Ed. 2d 17 (1984), a protective order restricting speech is subject to First Amendment scrutiny. More specifically, Seattle Times set forth the following prerequisites for the issuance of a constitutionally valid gag order in connection with discovery proceedings: 1) that it be based upon a "showing of good

cause"; 2) that it be "limited to the context of pretrial civil discovery"; and 3) that it "not restrict the dissemination of the information if gained from other sources." In light of Seattle Times, it is apparent that in the absence of any of the foregoing prerequisites, the issuance of a gag order will not pass constitutional muster.

Measured against the criteria established in Seattle Times, the gag order challenged instantly must be struck down as violative of the First Amendment. First, there is a glaring absence of evidence of record in the case at bar demonstrating the existence of "good cause" for the gag order entered by the trial court. No testimony was taken and, unlike in Seattle Times, no affidavits were submitted to the trial court

demonstrating any basis for the issuance of a gag order.

With respect to the second prong of Seattle Times, it is clear that the scope of the challenged gag order is "not limited to the context of pretrial civil discovery." Rather, by its express terms, the gag order is to remain in effect indefinitely. The trial judge stated on the record in entering that order: ". . . and this gag order on disclosing [the identity of the C.I.] will remain in full force and effect until further Order of the Court." Finally, the challenged gag order similarly fails to satisfy the third prong of Seattle Times. The language chosen by the trial court in fashioning that order creates a blanket prohibition against disclosing the identity of the alleged confidential informant and clearly

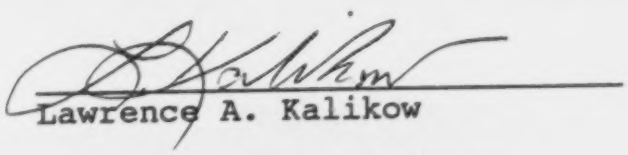
precludes the dissemination of such information even if gained independently of the discovery process. This is in stark contrast to the protective order issued in Seattle Times, the terms of which order expressly limited its application to only information gained by the defendant through the use of the discovery process. Clearly, to the extent the instant gag order restricts dissemination of information gained outside the discovery process, it must be viewed as a classic prior restraint on protected speech, requiring exacting First Amendment Scrutiny. See Seattle Times, supra.

If the challenged gag order cannot survive the relaxed First Amendment scrutiny applicable in the context of pretrial civil discovery, a fortiori it

cannot survive the constitutionally mandated heightened scrutiny applicable to classic prior restraints.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this Petition for Writ of Certiorari should be granted.



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IN THE SUPREME COURT OF PENNSYLVANIA

EASTERN DISTRICT

DOMINIC ROBERT, a minor by his mother and natural guardian, MARY ANNE ROBERT, and MARY ANNE ROBERT

Petitioners

v.

PHILADELPHIA PARK and BENSALEM RACING ASSOCIATION, INC., and KEYSTONE TURF CLUB, INC., and GREENWOOD RACING, INC., and THROROUGHBRED RACING PROTECTIVE BUREAU, INC.

Respondents

No. 388 E.D. Allocatur Dkt. 1994

Petition for Allowance of Appeal from the Order of the Superior Court

ORDER

PER CURIAM:

AND NOW this 5th day of December, 1994, the Petition for Allowance of Appeal is GRANTED.

[J-162 of 1995]

IN THE SUPREME COURT OF PENNSYLVANIA

Eastern District

DOMINIC ROBERT, a minor by his mother and natural guardian, MARY ANNE ROBERT, and MARY ANNE ROBERT

v.

PHILADELPHIA PARK, and BENSALEM RACING ASSOCIATION, INC., and KEYSTONE TURF CLUB, INC., and GREENWOOD RACING, INC., and THROROUGHBRED RACING PROTECTIVE BUREAU, INC.

No. 102 E. D. Appeal Dkt. 1994

Appeal from Order of Superior Court entered April 12, 1994, at No. 0004 Philadelphia 1994, Quashing Appeal from Order of Court of Common Pleas of Bucks County, Civil Division, entered November 19, 1993, at No. 92-08480-17-2

Argued: October 23, 1995

ORDER

PER CURIAM: DECIDED: November 22, 1995

Appeal dismissed as having been improvidently granted.

Judgment entered

IN THE SUPERIOR COURT OF PENNSYLVANIA

DOMINIC ROBERT, a minor by his mother and natural guardian, MARY ANNE ROBERT, and MARY ANNE ROBERT

Appellants

v.

PHILADELPHIA PARK and BENSALEM RACING ASSOCIATION, INC., and KEYSTONE TURF CLUB, INC., and GREENWOOD RACING, INC., and THROROUGHBRED RACING PROTECTIVE BUREAU, INC.

No. 00004 Philadelphia 1994

(C.P. Bucks County No. 92-008480-12-2)

ORDER

The court hereby grants the motion to quash this appeal.

PER CURIAM

DATE: April 12, 1994

IN THE COURT OF COMMON PLEAS OF

BUCKS COUNTY, PENNSYLVANIA

CIVIL ACTION -- LAW

DOMINIC ROBERT

v.

PHILADELPHIA PARK

No. 92-8480-17-2

BEFORE: HONORABLE WARD F. CLARK, JUDGE

DOYLESTOWN, PENNSYLVANIA

NOVEMBER 19, 1993

Within 90 days of today the deposition of the following named persons will be completed by the Plaintiff.

. . .

All right, in addition to that Order within 120 days of today that would be 30

days after the 90, the deposition of the C.I. will take place in my chambers in camera.

Meanwhile the identity of the C.I. will not be disclosed by the attorneys in this case -- Plaintiff or Defendant, all of you being officers of the Court and this gag order on disclosing such identity will remain in full force and effect until further Order of the Court.

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No. 95-1661

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

DOMINIC ROBERT, a minor, by his mother and natural guardian, MARY ANNE ROBERT,

Petitioners,

vs.

PHILADELPHIA PARK, and BENSALEM RACING ASSOCIATION, INC. and KEYSTONE TURF CLUB, INC. and GREENWOOD RACING, INC. and THOROUGHBRED RACING PROTECTIVE BUREAU, INC.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF PENNSYLVANIA

RESPONDENTS' BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF THE QUESTION PRESENTED

Whether this Honorable Court may or should review the decision of the Pennsylvania Supreme Court to dismiss, as having been improvidently granted, an appeal from the order of the Pennsylvania Superior Court quashing, as having been taken from a currently unappealable order, an appeal from the interlocutory order of the trial court, which regulated the parties' discovery by temporarily prohibiting the petitioners' attorneys from disclosing to their clients the name of the confidential informant whose information led to the petitioners' arrest.

LIST OF PARTIES

Petitioners in this action are Dominic Robert, a minor, by his mother and natural guardian, Mary Anne Robert. Respondents in this action are Philadelphia Park and Bensalem Racing Association, Inc. and Keystone Turf Club, Inc. and Greenwood Racing, Inc. and Thoroughbred Racing Protective Bureau, Inc.

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I. THIS HONORABLE COURT DOES NOT HAVE JURISDICTION TO REVIEW THIS CASE: THE ORDER PRESENTED BY THE PETITIONERS IS NOT A FINAL ORDER, BUT AN INTERLOCUTORY DISCOVERY ORDER, AND THE ORDERS OF THE STATE APPELLATE COURTS, ALTHOUGH FINAL, DO NOT PRESENT A RULING ON THE MERITS OF THE TRIAL COURT'S ORDER OR A CONSTITUTIONAL QUESTION . . . . . -5-

II. EVEN IF ITS MERITS ARE REVIEWED, THE ORDER DOES NOT ENCROACH ON FREE SPEECH AS A PRIOR RESTRAINT AND THE REQUIREMENTS FOR CONSTITUTIONAL

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No. 95-1661

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

DOMINIC ROBERT, a minor, by his mother and natural guardian, MARY ANNE ROBERT,
Petitioners

v.

PHILADELPHIA PARK, and BENSALEM RACING ASSOCIATION, INC. and KEYSTONE TURF CLUB, INC. and GREENWOOD RACING, INC. and THOROUGHBRED RACING PROTECTIVE BUREAU, INC.,
Respondents

On Petition for Writ of Certiorari
to the Supreme Court of Pennsylvania

RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF JURISDICTION

Petitioners have invoked the jurisdiction of this Honorable Court pursuant to 28 U.S.C. 1257.

Respondents respectfully suggest that the jurisdiction provided to this Honorable Court under Article III of the Constitution and 28 U.S.C. 1257 does not obtain in this case. The trial court's discovery-related order which petitioners attempt to present to this Honorable Court is not a final or appealable interlocutory order. The orders of the Pennsylvania Superior Court and the Pennsylvania Supreme Court, although final, do not

address the merits of the trial court's order. Rather, the Superior Court's order simply holds that the trial court's order is not currently appealable, and the Supreme Court's order simply dismisses, as having been improvidently granted, the appeal allowed from the Superior Court's decision to quash the petitioner's premature appeal.

Petitioners originally filed a petition for certiorari which was rejected by this Honorable Court as failing to conform to the rules. Petitioners subsequently refiled what they posit as a conforming Petition for Certiorari.

CONSTITUTIONAL PROVISIONS

Respondents deny that any constitutional question is presented by this case.

COUNTERSTATEMENT OF THE CASE

This case arises out of an incident which occurred at the Philadelphia Park racetrack on June 6, 1991. Plaintiff-petitioner Maryanne Robert [hereinafter collectively referred to with her son, plaintiff-petitioner Dominic Robert, as "the Roberts"] maintains that on that day Philadelphia Park security personnel conducted a search of her person and her vehicle in such a manner to cause her and her son to suffer emotional and physical injuries. The Roberts allege that the search was prompted by information furnished to the security personnel by a confidential informant.

The Roberts filed suit against defendants Philadelphia Park and Bensalem Racing Association, Inc., and Keystone Turf Club, Inc. and Greenwood Racing, Inc. and Thoroughbred Racing Protective Bureau, Inc.

[hereinafter known as "the Park"] in the Court of Common Pleas of Bucks County.

The Roberts subsequently served interrogatories on the Park on May 29, 1993. The Park responded by serving objections to an interrogatory which sought the identity of the confidential informant. The trial court entered an order directing the Park to serve complete answers, and the Park filed a motion for reconsideration on August 27, 1993. In connection with this motion, the trial judge arranged a hearing for October 19, 1993. Counsel for both parties were heard on the issues of when and under what circumstances the identity of the informant could be released.

By order of November 3, 1993, the trial court determined that the confidential informant would be identified "in camera" and any testimony would be taken in the presence of the court. The confidential informant was ordered to appear before Judge Clark in chambers to be deposed on November 23, 1993.

The Roberts subsequently subpoenaed an individual they suspected was the informant on November 1, 1993 in order to take his deposition on November 19, 1993. In response, the Park filed a motion for a protective order and a stay of proceedings, on November 18, 1993. In this motion, the Park argued that the deposition testimony of plaintiff Roberts' husband, Robert Scetta, indicated that plaintiffs suspected that the individual subpoenaed for November 19 was the informant, and that the plaintiffs' attempt to depose that individual was in derogation of the court's order calling for the informant's deposition in camera on November 23.

A conference was held on November 19 to determine this motion. After counsel for the Park identified the confidential informant at sidebar at the request of the judge, the court issued the order which the petitioners attempt to bring before this Honorable Court. That order provided a schedule for discovery and prohibited The Roberts' counsel from disclosing the identity of the confidential informant to anyone until further order of the court. Contrary to the statement of petitioners that the court ruled without evidence, the record contained the discovery deposition testimony of Mary Anne Robert's boyfriend, Robert Scetta which demonstrated a history of confrontation between the former and the informant predating the incident; thus the Park justifiably feared that The Roberts and Mr. Scetta would attempt to intimidate, confront or otherwise threaten the informant.

The confidential informant was deposed before the trial court on April 19, 1994.

The Roberts thereafter appealed the interlocutory discovery order to the Superior Court of Pennsylvania, which quashed the appeal as having been taken from an order that was not currently appealable. The Roberts then successfully petitioned the Pennsylvania Supreme Court for Allowance of Appeal. However, after briefing and oral argument, the Pennsylvania Supreme Court dismissed the appeal as improvidently granted by order of November 22, 1995. The Roberts' Petition for Certiorari followed.

The Park disagrees that any federal question was ever preserved for review by this or any other Court.

REASONS FOR DENYING THE WRIT

I. THIS HONORABLE COURT DOES NOT HAVE JURISDICTION TO REVIEW THIS CASE: THE ORDER PRESENTED BY THE PETITIONERS IS NOT A FINAL ORDER, BUT AN INTERLOCUTORY DISCOVERY ORDER, AND THE ORDERS OF THE STATE APPELLATE COURTS, ALTHOUGH FINAL, DO NOT PRESENT A RULING ON THE MERITS OF THE TRIAL COURT'S ORDER OR A CONSTITUTIONAL QUESTION

The power of this Honorable Court to review the decisions rendered by state courts is limited.

The interlocutory discovery order which the petitioners seek to present to this Honorable Court does not fall within that limited jurisdiction, because that order is not a "Final judgments or decrees rendered by the highest court of a State" as required by 28 U.S.C. § 1257 (a). The grant or denial of a protective discovery order is deemed interlocutory because it makes no final disposition of the matter in controversy and is therefore not subject to appeal. Mackowain v. Gulf Oil Corp., 369 Pa. 581, 87 A.2d 314 (1952). Orders which preclude the disclosure of information on the grounds of privilege are not appealable under the collateral order doctrine. Steel v. Weisberg, 347 Pa. Super. 106, 500 A.2d 428 (1985).

While the order of the Pennsylvania Supreme Court qualifies under the first clause of Section 1257 (a), that order is not reviewable by this Honorable Court, because that order did not decide the merits of the trial court's

order and, consequently, presents no justiciable or Constitutional issue for this Honorable Court to resolve.

Likewise, for all of these reasons, the order of the Pennsylvania Superior Court, which quashed the petitioners' appeal from the discovery order, does not qualify for this Honorable Court's limited jurisdiction.

II. EVEN IF ITS MERITS ARE REVIEWED, THE ORDER DOES NOT ENCROACH ON FREE SPEECH AS A PRIOR RESTRAINT AND THE REQUIREMENTS FOR CONSTITUTIONAL ENDORSEMENT ENUNCIATED UNDER SEATTLE TIMES V. RHINEHART

Additionally, this temporary, interlocutory gag order issued in pre-trial discovery, which prohibits disclosure of the identity of the confidential informant, and which was obtained after a full hearing on the merits of the request, was open-ended and designed to be temporary. The order left open the opportunity for plaintiff to seek relief during discovery. The Roberts never sought further relief after the order was granted.

The temporary gag order was well within the lower court's jurisdiction and discretion as an order regulating the discovery process. It can be likened to an order sustaining an objection at a deposition, or an objection to an interrogatory.

Even if the merits of the order are reviewed, the order is in no way an encroachment on free speech as a prior restraint. Neither does this order, which meets the requirements for constitutional endorsement enunciated

under Seattle Times v. Rhinehart, 467 U.S. 20, 104 S.Ct. 2119, 81 L. Ed. 2d. 17 (1984), violate the state or federal constitution.

No litigant has an unrestrained right to disseminate information obtained through pre-trial discovery. Here, the trial court's temporary gag order was issued during pre-trial discovery for the good cause of protecting the informant from physical and verbal harassment and does not violate the prohibition against orders which prevent disclosure of information obtained outside of discovery. The order meets every requisite set out by this Court in Seattle Times for a constitutionally valid "gag" order.

In Seattle Times, this Court declared that there is no unfettered right to publish information gathered in this context and protective orders entered under the appropriate circumstances do not offend the First Amendment. Id. at 31. It expressly distinguished orders prohibiting dissemination of discovered information before trial as "not the kind of classic prior restraint that requires exacting First Amendment scrutiny." Id., at 33 (citing Gannett v. Depasqualle, 433 U.S. 368, 399 (1970)(Powell, J., concurring). To the contrary such limitations on a party's ability to disseminate information discovered in advance of trial, implicates the First Amendment rights of the restricted party to a far lesser extent than would restraints in a different context. Id., at 34. This Court was also cognizant of the possibility of exploitation under circumstances which necessarily allow intrusion into the private affairs of litigants and third parties. 467 U.S. at 34-35.

Conscious of these concerns, this Court proscribed that a valid gag or protective order: (1) must be based upon "a showing of good cause"; (2) be "limited to the

context of pre-trial civil discovery"; and, (3) that it "not restrict dissemination of information if gained from other sources." Id., 467 U.S. at 37.

The Park has repeatedly shown "good cause" for the order throughout the course of this discovery dispute by demonstrating that the disclosure of this information would be chaotic to the Philadelphia Park racing community and destructive of the informant's safety, well-being and livelihood, particularly given the nature of the horse racing business and the sensitive nature of the information. Testimony of record does support defendant's assertions: according to the plaintiff's own deposition and the deposition of witness Robert Scetta, there was a history of confrontation between Mr. Scetta and [the confidential informant] predating the subject incident. It was feared plaintiff and her boyfriend, Mr. Scetta would attempt to intimidate, confront or otherwise threaten the informant.

Secondly, Seattle Times requires that orders be limited to the context of pre-trial civil discovery in order to be constitutionally sound. The order, which was issued in the pre-trial phase of this case, and which governed information obtained through interrogatories, the noticing of a deposition and other procedural devices, conclusively met this requirement.

Also, the order merely states that the identity of the confidential informant temporarily may not be disclosed by the attorneys for either party in this case until "further notice" of the court. By its plain terms, and by the context in which it was issued, the order is conspicuously limited to the context of pre-trial discovery and clearly contemplates that further order of the court will review and/or release it at an appropriate time. The Park never

requested, nor did the trial court actually order, an absolute, permanent bar of disclosure of the identity of the information and discovery information therefrom.

Moreover, The Roberts never inquired of the trial court what the duration of the order, objected its perceived duration, suggested a different time period for which the order would be in effect, or have since attempted to have it lifted.

The informant's identity was released to the court and The Roberts' counsel. The deposition was held, and the right to question the informant was in no way impeded. The gag order simply, and temporarily, protected the informant from the very real threat of physical and verbal abuse that would be caused by the release of his name.

Finally, the order meets the third prong of the Seattle Times test. First, the information about the existence and identity of a confidential source was obtained, or at least confirmed through pre-trial discovery. Were The Roberts allowed to disseminate the informant's identity of the confidential informant, simply because they may have previously suspected his identity, the gag order would be toothless.

The Roberts, through their attorney, were given access to the informant for deposition and have the substance of the information that he provided to the track, from the Park' answers to interrogatories. In short, they were given the ability to learn anything relevant about the informant or the information that he provided that they might need to prosecute their case. In fact they were given the opportunity to learn this information from the informant himself, in person, under oath and in the presence of the trial court. Just as in Seattle Times the

protective order here still allows The Roberts to prepare for and try their case without impingement. And, again, even if it did not it is not prior restraint.

The lower court's order amply satisfies the requisites of Seattle Times for a constitutionally valid protective order. Consequently, the lower court's order may be affirmed.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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